

ENTERED

March 03, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

REYNALDO SARMIENTO

Petitioner,

v.

BOBBY LUMPKIN,

Respondent.

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Civil Action No. 2:20-CV-00272

ORDER ACCEPTING MEMORANDUM AND RECOMMENDATION

Pending before the Court is the December 23, 2021 Memorandum and Recommendation ("M&R") of Magistrate Judge Julie K. Hampton. (Dkt. No. 50). In the M&R, Magistrate Judge Hampton recommends that the Court grant Respondent Bobby Lumpkin's Motion for Summary Judgment, (Dkt. No. 40), and dismiss *pro se* Petitioner Reynaldo Sarmiento's application for a writ of habeas corpus, (Dkt. No. 1). Further, Magistrate Judge Hampton recommends that the court deny a certificate of appealability.

Sarmiento was provided proper notice and the opportunity to object to the M&R. See 28 U.S.C. § 636(b)(1). Sarmiento did not file an objection. As a result, review is straightforward: plain error.¹ *Guillory v. PPG Indus., Inc.*, 434 F.3d 303, 308 (5th Cir. 2005).

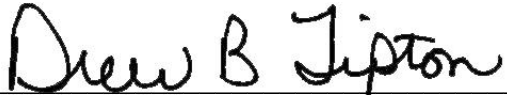
¹ The comment to Rule 72 of the Federal Rules of Civil Procedure states that Rule 72 is inapplicable in the habeas context. See Fed. R. Civ. P. 72(b) advisory committee's note to 1983 addition; accord *Nara v. Frank*, 488 F.3d 187, 195 (3d Cir. 2007). Rather, Rule 8 of the rules governing § 2254 cases provides instructions on the timely filing of objections that, in relevant part, mirror 28 U.S.C. § 636(b)(1)(C). Compare Rule 8, Rules Governing Section 2254 Cases ("Within 14 days after being served, a party may file objections as provided by local court rule. The judge must determine de novo any proposed finding or recommendation to which objection is made.") with 28 U.S.C. § 636(b)(1)(C) ("Within fourteen days after being served with a copy,

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No plain error appears. Accordingly, the Court **ACCEPTS** the M&R as the Court's Memorandum Opinion and Order. The Court **DISMISSES WITH PREJUDICE** Sarmiento's Petition for Writ of Habeas. The Court **DENIES** a certificate of appealability.

It is SO ORDERED.

Signed on March 3, 2022.



DREW B. TIPTON
UNITED STATES DISTRICT JUDGE

any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”). Thus, this Court considers Rule 8, Section 636(b)(1)(C), and Fifth Circuit precedent in weighing the effect of a failure to timely object to an M&R addressing a habeas petition.